IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision:07.09.2007

1. C.R. No.430 of 2007

Union of India **.....Petitioner**

Vs.

Dharam Pal Sharma **.....Respondent**

2. C.R. No.1615 of 2007

Union of India **.....Petitioner**

Vs.

M/s Narinder Singh and Sons and others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Puneet Jindal, Advocate for the petitioners.

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This order will dispose of two petitions, namely, C.R. No.430 of 2007 and C.R. No.1615 of 2007 wherein common questions of law and fact is involved. The facts have been noticed from C.W.P. No.430 of 2007.

The challenge in the present petition is to an order passed by the District Judge, Gurdaspur dated 7.9.2006 where in an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, `the Act'), the prayer made by the respondent for an appointment of arbitrator was accepted. The only ground raised by learned counsel for the petitioner is that in terms of the judgment of Hon'ble the Supreme Court in **SBP & Co. v. Patel Engineering Ltd. and another,** (2005) 8 SCC 618, the District Judge did not have any authority to appoint the arbitrator as the power vested only with Hon'ble the Chief Justice of the High Court which could be delegated to any other Judge of the High Court. He has referred to paras 47(i), (ii) and (xi) of the judgment in **SBP & Company's case (supra),** which are as under:-

> "(i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.
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> (ii) The power under Section 11(6) of the Act, in its entirely,

could be delegated, by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court.

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(xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the High Court concerned or a Judge of that Court designated by the Chief Justice."

In spite of service, no one has appeared on behalf of the respondent.

The position of law, as referred to above, is quite explicit when a Constitution Bench of Hon'ble the Supreme Court has opined that the power exercised under Section 11(6) of the Act is not administrative but judicial and its delegation by Hon'ble the Chief Justice of the High Court could be only to a brother Judge of the same Court. The judgment of Hon'ble the Supreme Court is dated 26.10.2005. However, still the impugned order was passed on 7.9.2006 by the District Judge, Gurdaspur exercising the power under Section 11 of the Act, which in fact did not vest in him on the date. It is unfortunate that the judgment of Constitution Bench of Hon'ble the Supreme Court is neither noticed by the District Judge nor it was brought to his notice by either of the parties which resulted in the avoidable error. Once it is found that District Judge did not have any jurisdiction to pass the order on the date, there is no other option but to set aside the same and restore status quanti. The case shall now be dealt with in terms of the law laid down by Hon'ble the Supreme in **SBP Company's case (supra).**

The revisions are disposed of accordingly.

September 07, 2007 **(RAJESH BINDAL)**
renu **JUDGE**